LIBRARY
SUPREME COURT, U. S.

IN THE

Supreme Court of the United States

FILED
DEC 8

October Term, 1975

No. 75-815

JOHN ROGERS,

Petitioner,

vs.

COUNTY OF LOS ANGELES; MUNICIPAL COURT, Los Angeles Judicial District; VINCENT N. ERICKSON, as Presiding Judge thereof; WILLIAM H. MCCLOUD, as Clerk thereof; ROBERT CLIFFORD, as Assistant Secretary to the Presiding Judge thereof; MARK BLOODGOOD, as Auditor-Controller of the County of Los Angeles; HAROLD J. OSTLY, as the Tax Collector-Treasurer of the County of Los Angeles,

Respondents.

Petition for Writ of Certiorari to the Court of Appeal, Second Appellate District, State of California.

CY H. LEMAIRE and
STEVEN R. PINGEL,
2000 Riverside Drive,
Suite 200,
Los Angeles, Calif. 90039,
(213) 660-2940,
Attorneys for Petitioner.

LEMAIRE, FAUNCE & KATZNELSON,
Of Counsel.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

	Page
Jurisdiction	1
Opinion Below	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	2
Questions Presented	9
Reasons for Granting the Writ	12
I	
Petitioner's "Liberty" Interest Under the Fourteenth Amendment Was Violated by the Arbitrary Action of the Respondents	12
II	
The Rules of the Municipal Court Require That a Discharge Be Based Upon Cause and, Therefore, Petitioner Had a Property Interest in His Job	15
III	
The Court of Appeal Made an Error of Law in Its Construction of Government Code Sections 72192 and 72706	17
IV	
A Commission May Only Be Discharged by the Judges Acting Collectively	19
Conclusion	20

INDEX TO APPENDICES

Appendix A. Opinion of the Court of Appeal .....App. p. 1

Appendix B. Order Denying Hearing After Judgment by the Court of Appeal, 2nd District, Division 4, Civil No. 43676 7

TABLE OF AUTHORITIES CITED

Cases	Page
Board of Regents of State Colleges v. Roth, 408 U.S. 562 (1972)	12, 13
Endler v. Schutzbank (1968) 58 Cal.3d 162	13
Goss v. Lopez, 419 U.S. 565 (1975)	13
Perry v. Sindermann, 408 U.S. 593 (1972)	12, 13, 16, 17
Pinsker v. Pacific Coast Society of Orthodontists (1974) 12 Cal.3d 541	13
United States v. Philbrick, 120 U.S. 52 (1887)	16
Rules	
Local Rules of the Municipal Court, Los Angeles Judicial District, Rule 5	2, 18, 20
Local Rules of the Municipal Court, Los Angeles Judicial District, Rule 6(c)	18
Local Rules of the Municipal Court, Los Angeles Judicial District, Rule 22	2, 3, 15, 18
Statutes	
California Government Code, Sec. 72192	2, 16, 18, 19
California Government Code, Sec. 72706	2, 17, 18
United States Code, Title 28, Sec. 1257	2
United States Constitution, Fourteenth Amendment	2, 12

IN THE

Supreme Court of the United States

October Term, 1975
No. .....

JOHN ROGERS,

Petitioner,

vs.

COUNTY OF LOS ANGELES; MUNICIPAL COURT, Los Angeles Judicial District; VINCENT N. ERICKSON, as Presiding Judge thereof; WILLIAM H. MCCLOUD, as Clerk thereof; ROBERT CLIFFORD, as Assistant Secretary to the Presiding Judge thereof; MARK BLOODGOOD, as Auditor-Controller of the County of Los Angeles; HAROLD J. OSTLY, as the Tax Collector-Treasurer of the County of Los Angeles,

Respondents.

Petition for Writ of Certiorari to the Court of Appeal, Second Appellate District, State of California.

The petitioner, John Rogers, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal, Second Appellate District, State of California, entered in this proceeding on July 16, 1975.

Jurisdiction.

The judgment of the Court of Appeal, Second Appellate District, was entered on July 16, 1975. A timely

petition for hearing was filed in the Supreme Court of the State of California and a hearing was denied on September 10, 1975. This petition is being filed within the time allowed by law. This Court's jurisdiction is being invoked under 28 U.S.C. 1257.

Opinion Below.

The opinion of the Court of Appeal, not reported, appears in the Appendix hereto, marked Appendix "A."

The order of the Supreme Court of California, denying a hearing herein, appears in the Appendix hereto, marked Appendix "B."

Constitutional and Statutory Provisions Involved.

Involved herein are the Fourteenth Amendment to the Constitution of the United States; Sections 72192 and 72706 of the Government Code of California; Rules 5 and 22 of the Local Rules of the Municipal Court, Los Angeles Judicial District.

Statement of the Case.

After serving as a deputy city attorney for the City of Los Angeles for some twenty years, the petitioner was sworn in as a Commissioner of the Municipal Court of the Los Angeles Judicial District on August 27, 1969, after having been selected for the position by a majority vote of the judges of that court at a meeting of the judges held on June 4, 1969 [RT 70:2-12].

At that meeting one judge stated to the petitioner that the judges wanted a commissioner who would serve for a considerable length of time and then asked

the petitioner how long he expected to serve [RT 87:1-4]. The petitioner, who was then 54 years old, answered that he would serve until he was 65. Thereafter, the judges voted to appoint him to the position of Commissioner [CT 110:11-12]. Notwithstanding that the California statute provides that the commissioners serve "at the pleasure of the judges", the petitioner understood both from this colloquy, from the Local Rules of Court and from the fact that no commissioner of this court had ever been discharged, that his appointment would last until his retirement age of 65 [CT 110:5-7 and 13-14].

Under California law, custom and practice, court commissioners primarily conduct judicial proceedings, including civil and criminal trials under stipulation as judges pro tem.

Some time prior to November 16, 1972, the presiding judge of the respondent court, pursuant to Rule 22 of the Local Rules for the Municipal Court of the Los Angeles Judicial District, referred the matter of the petitioner's possible termination to the court's standing Committee on Personnel for investigation and report [CT 186].

On November 16, 1972, the Committee on Personnel reported by letter to the presiding judge. The Committee's letter-report read in pertinent part as follows:

> "The Personnel Committee, as you had requested, have examined the material as to the conduct of Commissioner John Rogers and at the meeting of the Committee have discussed the matter thoroughly.
>
> "We find that his performance and conduct in the San Pedro branch has been unsatisfactory.

"We find that his performance and conduct in the misdemeanor and traffic courts has been unsatisfactory.

"We find that his performance and conduct in the trial and preliminary examination courts has been unsatisfactory.

"We find that his attitude and attention to duty have been unsatisfactory. We find that he has on innumerable occasions left the place of his assignment when he had finished the work immediately at hand, and after as short a time on duty as three or four hours, without permission from the Presiding Judge, or from any of the judges at the particular situs.

"We find that Commissioner Rogers' conduct on two occasions has been of such a character as warranted termination of his services in each case for such cause alone, and that in each such case his conduct was in such derogation of his office and his duty as to justify a finding of total unfitness.

"Consequently, the Committee recommends that his services be terminated as soon as possible."

On November 20, 1972, the presiding judge prepared a letter and attached thereto the said report of the Personnel Committee and an order of discharge. The letter and its attachments were then selectively presented (but not distributed) to only 32 judges of the 63 judges then sitting on the municipal court [CT 79:11-14; RT 55:11-14], *viz.*, the presiding judge had his bailiff take the original of this letter and its attachments and show them to each of these judges, individually, with an admonition in the letter that it should be

kept confidential among the judges to whom it was presented. The discharge order was in a petition-like format for the signatures of these judges and purported to discharge appellant for "good cause" [CT 68:14-17 and CT 72 and 73]. The discharge order read as follows:

> "ORDER OF THE JUDGES OF THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT
>
> "It appearing that the Personnel Committee of this Court has examined numerous complaints concerning the quality and quantity of service by Court Commissioner John Rogers.
>
> "It further appearing that the said Committee has conducted an investigation and finds such complaints justified.
>
> "It further appearing that the Personnel Committee of this Court has recommended that John Rogers should hereafter not occupy the office of Commissioner.
>
> "Now, therefore, good cause appearing, it is hereby ordered that John Rogers shall not hereafter hold office as Commissioner of this Court."

On November 24, 1972, the presiding judge handed the petitioner a notice of discharge [CT 71] after telling him that a majority of the judges had either signed the order or had indicated that they would do so [CT 75]. Prior to handing the notice of discharge to the petitioner, the presiding judge informed him that he could resign from his position, but the petitioner refused to do so whereupon the presiding judge handed him the notice of discharge [CT 75].

At least one of the judges who signed the order later confirmed that the petitioner had been discharged for cause [CT 119]. The presiding judge's letter, its attached report and the order, were deliberately kept confidential from the other 31 judges of the court to whom such documents were not presented until after the purported discharge had taken place [CT 74].

These other judges, who were unaware of any action against the petitioner prior to his purported discharge [CT 30], were not permitted to even see the Personnel Committee report until four or five days after the discharge [CT 28:18-20; 30; 73].

Some of the 31 judges to whom the report and order of November 20th had not been exhibited protested the action taken, the lack of procedural fairness and the failure to have the matter considered at a meeting of the judges [CT 30; 73]. On November 27, 1972, three days after the discharge, the presiding judge had his bailiff present a new letter, dated November 27, 1972, together with a copy of his letter of November 20th and its attached report and order, to the other 31 judges. Only five of these other judges added their signatures of approval to the order [CT 73].

On December 4, 1972, at the annual meeting of the judges of the court, a motion was adopted that the question of whether the petitioner's discharge should be reconsidered would be submitted to the judges by a secret written ballot to be distributed and returned prior to December 15, 1972 [CT 69:19-29; 76]. The ballot did not give the judges the opportunity to decide *de novo* the merits of nor the manner of petitioner's

discharge. Some of the judges were improperly influenced to vote against a reconsideration of the purported discharge action. That is, the judges were improperly advised at the meeting that, among other things, any reversal of prior action would embarass the court, and that the procedure utilized had been proper [CT 176-177].

The presiding judge called a special meeting of the judges on December 11, 1972, at which meeting members of the Personnel Committee were present, purportedly to amplify their report [CT 182]. At that meeting, however, the report was not made available by the Personnel Committee; and when one of the judges asked to see the Committee's investigation file, the chairman refused and stated, "Why don't you send your attorney over to see it?" [CT 117].

The result of the secret ballot regarding the motion to consider again the discharge of the petitioner was that 33 judges, a bare majority, voted against the motion [CT 70:14-18].

Thus, the Personnel Committee report itself was never presented or reported upon at any meeting of the judges despite the fact that such was required by the Local Rules [CT 28:31-29:2; 117:23-26; 126: 31].

Petitioner was never given notice of the charges nor was petitioner permitted to appear personally or by a representative before the court's standing Committee on Personnel, before any other committee, or before any meeting of the judges [RT 52:8-12; CT 80:16-22].

Accordingly, petitioner filed a petition for writ of mandate in the Superior Court of Los Angeles County, requesting that the Municipal Court be ordered to

restore him to his position, and that, if disciplinary action were to be taken, he be advised of the charges against him and that he be given a hearing thereon [CT 8, 9]. Issues were joined by answer of the respondent court and a trial was had [CT 120, 121].

At no time before or during the court trial of this matter was the petitioner or his counsel permitted to see the report of the Personnel Committee, which petitioner had subpoenaed for the hearing. At the trial, counsel for the respondent objected to the report's inspection by counsel for petitioner, stating that the document was "confidential" [RT 88:7-19]. The court examined the document at the bench and ordered that the document be placed in an envelope, marked for identification, to remain sealed until further order of the court. This precluded the petitioner from inspecting the very document which alleged the purported "cause" for his discharge as found in the order of discharge for cause signed by a bare majority of the judges [RT 89:7-11]. The Personnel Committee's report was, nevertheless, thereafter received into evidence by the trial court, without further notice to petitioner or his counsel, and was referred to in the court's Memorandum Opinion-Notice of Intended Decision [CT 127:6-10]. Thus, petitioner was prevented from being able to prepare and present at the trial a defense to the charges made in the Personnel Committee report.

Petitioner's petition for writ of mandate was denied by the trial court, and such denial has been affirmed by the appellate courts of California.

Questions Presented.

1. May a court commissioner, who serves "at the pleasure of" the judges of a court, be discharged, without notice or hearing, where the discharge is based upon serious charges made against the commissioner, and where the judges of that court have adopted local personnel rules dealing with discipline of court employees which rules effectively require that cause for discipline be shown?

2. Did the publication of charges of "unsatisfactory performance and conduct" and of "total unfitness" of the petitioner among the judges of the Municipal Court, which caused a bare majority of those judges to sign a petition ordering his discharge for cause, so affect petitioner's liberty interest protected under the Fourteenth Amendment as to require notice and hearing before the discharge became effective?

3. Did the Local Court Rules, adopted by the court as a part of a statutory scheme for the administration of the courts, which required that, in disciplinary matters, an investigation and report be made by the Committee on Personnel, where the contemplated discharge was, in fact, based upon serious charges, require notice of such charges to petitioner and hearing thereon prior to any discharge action being taken on said charges?

4. Did the Local Court Rules, adopted by the court as a part of the statutory scheme for the administration of the courts, give the petitioner and other commissioners of the court a reasonable expectancy of con-

tinued employment, absent a showing of good cause for discharge, thereby giving him a property interest in his position protected by the Fourteenth Amendment?

5. Does the fact that a state statute provides that court commissioners serve "at the pleasure of the judges" of a municipal court prevent the judges of such court from adopting local rules, authorized by a statutory scheme for adoption of court rules for the administration of the courts, which rules establish a certain amount of job security by requiring that cause be shown for discipline of court employees including commissioners?

6. Does the nature of the judicial office held, and the judicial duties performed by a court commissioner in California, and the concomitant requisite of judicial independence in such function, require, as a matter of public policy, the attribution thereto of a public interest in the independence of the judicial process, protected by the United States Constitution, so as to require notice and hearing prior to, or at least after, a discharge?

7. Was petitioner denied a fair trial where, on the ground of privilege, he and his counsel were denied an opportunity before and during the trial to inspect the report of the Committee on Personnel that had been the basis for the purported discharge of petitioner for cause, and which had been brought into the trial court pursuant to the subpoena of petitioner and which was read by the court at the trial and later admitted by the court into evidence without petitioner or his counsel ever having an opportunity to read it or prepare

any defense with respect thereto or comment thereon until after the decision of the trial court?

8. Where the pertinent statute provides that commissioners "hold office at the pleasure of the majority of the judges or the judge senior in service when there is an equal division of the judges," may a commissioner's discharge be validly effected by the surreptitious presentation, *seriatim,* to a preselected bare majority of the judges, of a damaging report and a discharge petition, without giving the other judges the opportunity to see the report and the petition or to take part in the consideration of the discharge action prior to the discharge being effected?

9. Can action required to be taken by "the judges" be validly accomplished under the United States Constitution by submission to and action of only a bare majority of the judges prior to the time that the action is taken?

10. Did the secret ballot relative to reconsideration of the discharge constitute an effective ratification of said discharge where the Personnel Committee's report was withheld from the judges after its initial exhibition to them, *seriatim,* and where the judges were not properly informed that the discharge action had been irregular and that they had the opportunity to consider the matter *de novo?*

REASONS FOR GRANTING THE WRIT.

I

Petitioner's "Liberty" Interest Under the Fourteenth Amendment Was Violated by the Arbitrary Action of the Respondents.

This Court has established the principle that public employees have the right to a pretermination hearing under the due process clause when they have suffered the deprivation of a liberty or a property interest (*Perry v. Sindermann*, 408 U.S. 593 (1972); *Board of Regents of State Colleges v. Roth*, 408 U.S. 562 (1972)).

One of the major issues involved in the case at bench is whether the discharge action affected petitioner's "liberty" interest so as to require a hearing prior to his discharge. The importance of this issue is that, even if the construction given to the statutory term "at the pleasure of" by the Court of Appeal were correct, the violation of the petitioner's liberty interest would still require a hearing. Petitioner's position, however, is that the phrase "at the pleasure of" has a neutral meaning in terms of legislative control over judicial tenure policies for judicial officers and that the intention of the lawmakers was that decisions regarding tenure policy for court commissioners were left to the discretion of the particular courts involved.

When, as in the instant case, serious charges have been stated in support of a discharge, it is axiomatic that the person's "liberty" interest has been damaged. This interest has been defined as the liberty to pursue an occupation or profession. An individual who has had his ability to pursue an occupation impaired is entitled to a hearing at which he may challenge the

reasonableness of the government action involved (*Sindermann, supra; Roth, supra; Pinsker v. Pacific Coast Society of Orthodontists* (1974) 12 Cal.3d 541; *Endler v. Schutzbank* (1968) 58 Cal.3d 162).

One of the material facts in the *Roth* case must be specially noted here. *Roth, supra,* involved a university professor who, after teaching for one year under a one-year appointment, was notified that he would not be rehired for a second academic year. It cannot be too strongly emphasized that no reason was stated, verbally or in writing, for the decision not to rehire him (408 U.S. at 568).

It must also be noted that there is a clear distinction between the case where someone's contract is simply not renewed and the case of one who is actually discharged from his position, based on charges of unfitness, as in the instant case. The latter should be entitled to an even greater degree of protection.

In *Goss v. Lopez,* 419 U.S. 565 (1975), this Court declared unconstitutional an Ohio statute which empowered public high school principals to suspend students for periods up to ten days, giving the students notice of the reasons for the suspension but not allowing any opportunity for a hearing. With respect to the question of the students' liberty interests, the Court stated the following:

> "The Due Process Clause also forbids arbitrary deprivations of liberty. 'Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him,' the minimal requirements of the clause must be satisfied. *Wisconsin v. Constantineau,* 400 US 433, 437, 27 L. Ed. 2d 515, 91 S. Ct. 507 (1971);

> *Board of Regents v. Roth, supra* at 573, 33 L. Ed. 2d 548. School authorities here suspended appellees from school for periods of up to ten days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment." 42 L.Ed.2d at 735.

If a ten-day suspension from high school can give rise to a violation of a student's liberty interest, surely the discharge of a court commissioner, whose only legal experience was in the public service, also requires that he be given a hearing complying with the requirements of due process.

In the instant case, there can be no serious question about the fact that petitioner's liberty interest was seriously damaged by the actions of the respondent. All of the members of the Municipal Court who had a hand in the discharge, as members of the Committee on Personnel or as signatories to the discharge order, were acting on the basis that "cause" had been established against the petitioner. The discharge order itself was expressly based on a finding of "good cause" for the discharge. Furthermore, the report of the Committee on Personnel contained specific findings which made extremely serious charges against the petitioner.

Once good cause for discharge was stated due process required that the petitioner be given the opportunity to defend himself before the Municipal Court judges made a decision on the alleged charges. Such an opportunity was not made available to the petitioner at any time.

II

The Rules of the Municipal Court Require That a Discharge Be Based Upon Cause and, Therefore, Petitioner Had a Property Interest in His Job.

The judges of the Municipal Court have adopted a statutory scheme of rules which follows the recommendation of the California Judicial Council that matters of employee discipline or removal be on the basis of merit. Removal "on the basis of merit" means nothing more nor less than removal for cause.

Rule 22 of the Rules of the Municipal Court of the Los Angeles Judicial District requires that all matters relating to discipline be referred to the standing Committee on Personnel and reported upon by that Committee to the judges before action is taken thereon. The requirement of a report, which entails an investigation and examination of facts, necessarily implies that a discharge must be "for cause."

In its report, the Committee on Personnel complied, at least in part, with Rule 22 by making factual findings in regard to petitioner's conduct, performance and fitness.

Moreover, by the very words of the order purportedly discharging petitioner, the judges have shown that they interpret their Local Rules as requiring good cause for the discharge of a Court Commissioner. The final clause of the order specifically states:

> "Now, therefore, *good cause appearing*, it is hereby ordered that John Rogers shall not hereafter hold office as Commissioner of the Court." (Emphasis added).

Furthermore, the first two clauses of the order recite that:

> ". . . [T]he Personnel Committee of this Court has examined numerous complaints concerning the quality and quantity of service by Court Commissioner John Rogers, . . . (and) the said Committee has *conducted an investigation and finds* such complaints justified." (Emphasis added) [CT 72].

Contemporaneous construction of a statute or rule by those charged with its enforcement and interpretation is entitled to great weight (*United States v. Philbrick*, 120 U.S. 52 (1887)). Great weight must, therefore, be given to the judges' construction of their Local Rules which construction led them to discharge the appellant on the basis of "good cause."

Clearly, the judges of the Municipal Court have exercised their "pleasure" under Government Code Section 72192 by adopting and operating consistently with rules which limit discharge to cases where good cause appears. Because of the self-imposed special rules which restrict the court from discharging an employee without cause, it can be safely said that employees have an expectancy that they will continue in their position as long as they are performing their duties satisfactorily.

This statutory scheme or policy of the Municipal Court, and the expectancy created thereby, gave the petitioner a property interest in his office, and, consequently, the right to a pretermination hearing. In *Perry v. Sindermann, supra*, at 601, this Court stated:

> ". . . '[P]roperty' interests subject to procedural due process protection are not limited by a few rigid, technical forms. Rather, 'property' de-

> notes a broad range of interests that are secured by 'existing rules or understandings.' (Citations.) A person's interest in a benefit is a 'property interest' for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement. . . ."

Evidence of the fact of the colloquy between the petitioner and Judge Waters [R 87:1-4; CT 110:11-12], and the fact that no Commissioner had previously been discharged [CT 110:13-14], was uncontradicted at the trial of this matter. These facts, together with the statutory scheme and policy of the Municipal Court in its Local Rules support the petitioner's contention that there was a mutual understanding and a policy which did, in fact, give him a property interest in the position of Commissioner and thereby entitled him to a pretermination hearing.

III

The Court of Appeal Made an Error of Law in Its Construction of Government Code Sections 72192 and 72706.

On pages 8 and 9 of the Opinion in this matter the Court of Appeal apparently construed the phrase "hold office at the pleasure of" to mean that the person holding such office may be removed without "cause" and, therefore, without a hearing.

On page 9 of the Opinion, the Court stated:

> "The Legislature has spoken plainly on the subject of discharge. It was for that body to determine whether the judges of the Court could remove a commissioner even though no one act, or series of acts, by him would amount to the

> 'cause' involved in dismissing tenured employees. Even if we construed Rule 22 as petitioner would have us do, a local court cannot deviate from the policy that the Legislature has established."

Petitioner submits that Local Rule 22 does not deviate from the policy of the Legislature. A reasonable and common sense construction of *Government Code* Sections 72706 and 72192, which provide that commissioners hold office "at the pleasure of" the judges, is that those sections do not of themselves establish a tenure policy for municipal court commissioners. Rather, the phrase "at the pleasure of" should be construed to reflect the apparent intention of the lawmakers which was that decisions regarding tenure policy for court commissioners were left to the "pleasure of" the particular courts involved.

This construction is consonant with wise policy in that it allows the local courts to provide, if they so choose, some measure of expectancy of job protection for commissioners who perform competently. Such expectancy naturally tends to attract more highly qualified attorneys to the position of court commissioner.

"At the pleasure of," therefore, has a neutral meaning in terms of legislative control over judicial tenure policies for judicial officers. The Government Code sections should be viewed as "enabling" statutes. The Legislature was simply leaving such matters up to the judges. In the Los Angeles Judicial District the judges exercised their pleasure by adopting the statutory scheme of Local Rules 22, 5 and 6(c) which required that the matter of the discharge of an employee be reported upon and acted upon at a meeting of the judges.

IV

A Commissioner May Only Be Discharged by the Judges Acting Collectively.

Government Code Section 72192 provides in pertinent part as follows:

> "Whenever the appointment of a commissioner . . . is authorized by law he shall be appointed by and hold office at the pleasure of a majority of the judges or the judge senior in service when there is an equal division of judges. . . ."

Petitioner submits that Section 72192 permits of but one interpretation. Clearly, before there could ever be "equal division" of judges on any issue, *all* of the judges would have had to have such issue presented to them. "Equal division" surely can only mean "division" over a particular issue or appointment. In essence, it means that there is a tie vote. The process of a body arriving at a tie vote would normally be at a meeting of that body.

In any case, at the very least it would mean that all of the judges, not just a select few, would have to be given the opportunity to vote on the matter in question. Had the judges of the Municipal Court been presented with such opportunity, it is reasonable to assume that there would have been considerable discussion among them and that a majority vote to discharge might never have been obtained. This is precisely one of petitioner's primary complaints; that is, that virtually half of the judges of the court were not only effectively disenfranchised on this issue, but were not even permitted the opportunity to discuss the issue with their brothers on the bench. Moreover, the judges of the court themselves have specified in

Local Rule 5 that they are bound by Roberts Rules of Order when acting collectively at a meeting.

Conclusion.

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeal, Second Appellate District.

Dated: December 5, 1975.

Respectfully submitted,

CY H. LEMAIRE and
STEVEN R. PINGEL,
Attorneys for Petitioner.

LEMAIRE, FAUNCE & KATZNELSON,
Of Counsel.

APPENDIX A.

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Four.

John Rogers, Petitioner and Appellant, vs. County of Los Angeles, et al., Respondents. Civ. No. 43676, (Superior Court No. C-52110).

Filed: July 16, 1975.

APPEAL from a judgment of the Superior Court, Los Angeles County. John W. Holmes, Judge. Affirmed.

Lemaire & Faunce, Cy H. Lemaire and Steven R. Pingel for Petitioner and Appellant.

John H. Larson, County Counsel, and John P. Farrell, Deputy County Counsel, for Respondents.

On August 27, 1969, petitioner was sworn in as a commissioner of the Municipal Court, Los Angeles Judicial District. On November 24, 1972, he was discharged from that position under the circumstances hereinafter set forth. He petitioned the superior court for a writ of mandate, seeking either a return to the position of commissioner or a return of the matter of his discharge to the municipal court for a hearing. After a trial, the petition was denied; he has appealed; we affirm.

Sometime prior to November 16, 1972, Judge Campbell, then the presiding judge of the municipal court, acting pursuant to Rule 22 of the local rules of that court, referred to the court's standing Committee on Personnel, for investigation and report, the matter of the possible termination of petitioner's appointment as a commissioner. On November 16, 1972, that committee

reported to Judge Campbell, by letter, recommending petitioner's termination. That report read as follows:

"Honorable Alan G. Campbell
Presiding Judge, Los Angeles Municipal Court
534 County Courthouse
Los Angeles, California 90012

"Re: Commissioner John Rogers

"Dear Alan:

"The Personnel Committee, as you had requested, have examined the material as to the conduct of Commissioner John Rogers and at the meeting of the Committee have discussed the matter thoroughly.

"We find that his performance and conduct in the San Pedro Branch has been unsatisfactory.

"We find that his performance and conduct in the misdemeanor and traffic courts has been unsatisfactory.

"We find that his performance and conduct in the trial and preliminary examination courts has been unsatisfactory.

"We find that his attitude and attention to duty have been unsatisfactory. We find that he has on innumerable occasions left the place of his assignment when he had finished the work immediately at hand, and after as short a time on duty as three or four hours, without permission from the Presiding Judge, or from any of the judges at the particular situs.

"We find that Commissioner Rogers' conduct on two occasions has been of such a character as warranted termination of his services in each case for such cause alone, and that in each such case his conduct was in such derogation of his office and his duty as to justify a finding of total unfitness.

"Consequently, the Committee recommends that his services be terminated as soon as possible."

On November 20, 1972, Judge Campbell transmitted that report to 32 out of the 63 judges then sitting on the municipal court, together with a draft order providing for the termination of petitioner's appointment. By November 24, 1972, 31 of the 32 judges had signed the discharge order, which read as follows:

> "ORDER OF THE JUDGES OF THE MUNICIPAL COURT OF THE LOS ANGELES JUDICIAL DISTRICT
>
> "It appearing that the Personnel Committee of this Court has examined numerous complaints concerning the quality and quantity of service by Court Commissioner John Rogers.
>
> "It further appearing that the said Committee has conducted an investigation and finds such complaints justified.
>
> "It further appearing that the Personnel Committee of this Court has recommended that John Rogers should hereafter not occupy the office of Commissioner.
>
> "Now, therefore, good cause appearing, it is hereby ordered that John Rogers shall not hereafter hold office as Commissioner of this Court."

One other judge had indicated to Judge Campbell that he was willing to sign the order. Under those circumstances, Judge Campbell told petitioner of the situation and offered him the opportunity to resign. Petitioner refused. The 32nd judge then signed the order and, on November 24, 1972, Judge Campbell handed petitioner a formal letter of discharge.

Some of the 31 judges to whom the letter and order of November 20th had not been transmitted expressed dissatisfaction with the action taken. On November 27, 1972, Judge Campbell transmitted copies of his letter of November 20th, of the draft order and of the committee report to the other 31 judges. At the annual meeting of the court, held on the 4th of December, the matter of petitioner's discharge was discussed. After considerable discussion and various parliamentary maneuvers, the judges voted to submit to all of the judges, by a secret ballot, the question of whether the discharge should be reconsidered. Such a ballot was taken and, on December 19th Judge Campbell reported to the court that 33 out of the 63 judges had voted against reconsideration.

Although stated in various ways, petitioner's contentions are these:

(1) That he was entitled to be discharged only for cause;

(2) That he was entitled to have the question of cause decided only after notice of the specific charges against him and a hearing at which he was present and represented by counsel;

(3) That the procedure followed in his discharge was irregular, in that he was entitled to action by the whole court, taken in open meeting.

I

We reject the first two contentions. The applicable statutes, as they read at the time herein involved, read as follows:

"Whenever the appointment of a commissioner or jury commissioner is authorized by law, he shall be appointed by and hold office at the pleasure of a

majority of the judges or the judge senior in service when there is an equal division of the judges." (Gov. Code, § 72192.)

"The judges of the municipal court shall appoint as many commissioners . . . as the business of the court requires. . . . Each commissioner shall hold office at the pleasure of the judges. . . ." (Gov. Code, § 72706.)

Except where a discharge resulted from a limitation on the constitutional rights of the person discharged (see *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 592), a person holding office at the pleasure of the appointing power may be removed even without judicially cognizable good cause, and without notice or hearing. (*Bogacki v. Board of Supervisors* (1971) 5 Cal.3d 771.) In the case at bench the trial court found, on evidence adequate to support the finding, that the discharge in question was not founded on any limitation on the exercise of petitioner's constitutional rights.[1]

Petitioner contends that the language of Rule 22 of the Los Angeles Municipal Court requires that a discharge be only for "cause" and after a hearing at which petitioner would be offered an opportunity to respond to any charges made against him. We disagree. The Legislature has spoken plainly on the subject of discharge. It was for that body to determine whether the judges of the court could remove a commissioner even though no one act, or series of acts,

---

[1]Petitioner claimed that he was discharged because some of the judges thought that he had been too lenient in sentencing and because he had testified in favor of another court attache in a discharge hearing. The trial court expressly found that neither of those matters was involved in his discharge.

by him would amount to the "cause" involved in dismissing tenured employees. Even if we construed Rule 22 as petitioner would have us do, a local court cannot deviate from the policy that the Legislature has established. (1 Witkin, Cal. Procedure (2d ed. 1970), Courts, § 129, pp. 399-400.)

It follows that the first two contentions are without merit.

II

We need not decide whether the procedure utilized by Judge Campbell was so irregular as to be invalid. On December 4th, as we have set forth above, the full court, assembled in its annual meeting, had before it the committee report and discussed it at length. The court adopted a method for review of the discharge. That review resulted in ratification of the discharge. It was for the court, so assembled, to determine the method for deciding whether to approve or disapprove the earlier action. Petitioner was entitled to no more. We agree with the trial court that no useful function would be served by requiring the municipal court to take, again, the action which it took by the secret ballot.

The judgment is affirmed.

NOT FOR PUBLICATION.

Kingsley, *J.*

We concur:

Files, *P. J.*

Dunn, *J.*

APPENDIX B.

Order Denying Hearing After Judgment by the Court of Appeal, 2nd District, Division 4, Civil No. 43676.

In the Supreme Court of the State of California, in bank.

Order Due September 12, 1975.

Rogers v. County of Los Angeles et al.

Filed: Sept. 10, 1975.

Appellant's petition for hearing DENIED.

Tobriner, J., is of the opinion that the petition should be granted.

TOBRINER,
Acting *Chief Justice*

I, G. E. BISHEL, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 7th day of Nov. A.D. 1975.

Clerk

By R. Barrow
Deputy Clerk